

## **complaint**

Mr Z complains that Tradewise Insurance Services Ltd unfairly declined a claim he made on his motor insurance policy after his car was stolen.

## **background**

Mr Z's car was for sale. He took a third party for a test drive. When they got back to Mr Z's house, the third party stole the car. There are several different accounts of what happened.

The police recorded that Mr Z said the thief stayed in the car when he got out, locked the doors from the inside and drove off. Mr Z's nephew told Tradewise the thief drove off as Mr Z went to get into the car's passenger seat. But Mr Z told Tradewise he and the thief were standing next to the car. He said the thief pushed him and grabbed the keys from his hand. Mr Z's neighbour said Mr Z just handed the keys over.

Tradewise noted the different versions of events. It said it preferred the account given to the police. That was closest to the time of the incident. It said under the policy Mr Z had a duty to take reasonable steps to safeguard the vehicle from loss. It also relied on the policy exclusion for loss suffered as the result of deception or trickery. Later Tradewise told us that further policy exceptions applied. One related to a consumer leaving the keys in the car. Another said loss through deception by a purported purchaser wasn't covered.

Our investigator didn't think it was fair for Tradewise to decline the claim. She said Mr Z intended to retain control of the car. She didn't think he handed over the keys so the thief could drive off. She said the thief created a distraction. He said he wanted to sit in the driver's seat to 'rev' the car and check whether it misfired. That gave him a chance to steal it. She said Tradewise should pay the claim, plus £250 compensation.

Tradewise said it had declined the claim based on several exclusions. It agreed that Mr Z didn't intend to have the car stolen. But he was deceived into leaving a potential purchaser in it with the keys. It didn't accept that previous decisions made by this service in similar cases were relevant. It said each case should be judged on its merits.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I think any insurer dealing with a theft claim would have reasonable cause for concern if given various conflicting versions of events, as in this case. But Tradewise accepted the first account Mr Z gave. Based on that, it decided to decline the claim, relying on a policy exclusion and Mr Z's failure to take reasonable care to prevent the loss.

In order to rely on Mr Z not taking reasonable care, Tradewise would first have to be able to show that he was aware of the risk that his car might be stolen. It would then have to show he didn't take steps to prevent it. But I don't think it can show that Mr Z recognised the risk of the car being stolen when getting out of the car to go round and sit in the passenger seat.

I think it's fair to say the policy exclusion for loss through deception applies here. The thief tricked Mr Z into getting out of the car. But we think the strict application of exclusions like

this can lead to unduly harsh outcomes. That's why we look at whether the facts appear to show that the insured person voluntarily gave up control of the car to the thief.

In this case, the thief created a distraction which allowed him to take control of the car. But I don't think Mr Z had any intention of allowing him to do that. Mr Z and his nephew were right next to the car. Mr Z never intended to allow the thief to sit in the car alone. It would only have taken a few seconds for Mr Z to reach the passenger seat. He couldn't have expected that during such a very brief time, the car would be stolen. So I don't think it was fair for Tradewise to decline the claim based on this exclusion.

Tradewise didn't rely on the 'keys in car' exclusion when it issued its final response letter to Mr Z. But had it done so, I don't think that would have been reasonable. For the exclusion to apply, Tradewise would have had to show the car was unattended. But Mr Z was either in it or very close to it at all times – as was his nephew at the time of the theft.

The other exclusion Tradewise later mentioned related to deception or trickery by a purported purchaser. The exclusion's similar to that set out in Tradewise's final response letter. So I don't think it would have been fair to rely on it, for the reasons set out above.

Tradewise says every case should be decided on its own merits. That's what we always do. The investigator sent Tradewise a few of our previous decisions only in order to show the general approach we take to cases like this. They aren't all upheld. In each case it depends on whether we think the insured person acted in a way that suggests full control was voluntarily handed over to the thief.

As I don't think that's what happened in this case, I think Tradewise should pay the claim. Mr Z was particularly inconvenienced by it being declined, as he uses the car for his business, so I don't think a payment of £250 compensation's unreasonable.

### **my final decision**

My final decision is that I uphold this complaint. I require Tradewise Insurance Services Limited to pay Mr Z's claim. It should add interest at the simple yearly rate of 8% - from the date of claim to the date of settlement - and pay him £250 compensation.

HM Revenue & Customs requires Tradewise to take off tax from the interest. It must give Mr Z a certificate to show how much is taken off if he asks for one.

Under the Financial Ombudsman Service's rules, I must ask Mr Z to accept or reject my decision before 17 May 2018.

Susan Ewins  
**ombudsman**